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IN THE SUPREME COURT OF THE UNITED STATES

Marie-Thérèse Halim Assa'ad-Faltas, M.D., M.P.H.,
versus
The United States Attorney General,
and the Secretary of Homeland Security.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITIONER'S REPLY AND SUPPLEMENTAL APPENDIX

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QUESTIONS PRESENTED

Questions of returning resident alien's status arise in many contexts. *Rosenberg v. Fleuti*, 374 U.S. 449 (1963), answered: since "brief, casual and innocent" trip abroad does not meaningfully interrupt permanent residence, it is not a departure in law; and return therefrom is not a new "entry." Congress codified the *Fleuti* doctrine in the Immigration Reform and Control Act of 1986 (IRCA) despite then-Attorney General Meese's view that *Fleuti* is limited to permanent residents.

In the Fourth and Ninth Circuits' law and the Second and Tenth Circuits' *dicta*, *Fleuti* protects all lawful-but-not-yet-permanent residents; but the Eleventh Circuit in this case held (and the Seventh Circuit, citing it, implied) that *agency* is authorized to limit *Fleuti's* reach. The Third Circuit, citing this case, recently adopted agency's declaration of *Fleuti's* demise.

Petitioner's life (at medical risk from exclusion) now hinges on these respectfully presented questions:

1. Is regulation implementing benefit-conferring remedial statute permissible even if, for no articulated or possible administrative advantage, it operates to (a) foreclose the judicial review provided by statute; (b) contravene the Helsinki Accord and other treaties recognizing travel for family needs as a basic human right; and (c) mislead that statute's beneficiaries into forfeiting benefits?

2. Does the Constitution permit the Executive to overrule or ignore the Judiciary and create geographic disparity and confusion in immigration law by continuing to apply invalid regulation outside the Circuits that invalidated it?

RESTATEMENT OF RESPONDENTS' MISSTATEMENT OF THE QUESTIONS PRESENTED

1. Is alien holder of Government-issued card stating that she is entitled "to reside and work" in the United States during validity of card considered "residing illegally"?

2. Must such alien's receipt of Government permission for "brief, innocent and casual" trip abroad convert her into "unadmitted parolee" upon her return from such trip? And is such "parole" revocable at whim of bureaucrats?

Parties to the Case

Petitioner is Dr. Marie-Thérèse Halim Assa'ad-Faltas who was party to all cases below. Under Egypt's patronymic system, the names following her Christian name are not last names but are, respectively, the Christian names of her father, grandfather, and great-grandfather. Her correct formal appellation is "Dr. Marie." To avoid the confusion created by the lower tribunals' use (or misspelling) of her grandfather's or great-grand-father's Christian names, interchangeably as if they were her last name, she is referred to herein as "Petitioner."

Respondents below were the Immigration and Naturalization Service (INS) and the Board of Immigration Appeals (BIA), both lodged in the U.S. Department of Justice when the cases started. The Homeland Security Act replaced INS with two bureaus in the Department of Homeland Security. Therefore, both the Attorney General and the Secretary of Homeland Security are Respondents herein.

For simplicity, INS, BCIS, BICE, the Attorney General, and the Secretary of Homeland Security, in their executive capacity, are collectively referred to herein as "Agency."

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I. THE CHALLENGED "ADVANCE PAROLE" REGULATIONS CAUSE PERVASIVE AND *CONTINUING* INTER-CIRCUIT CONFLICTS.

Respondents admit that: (1) Petitioner's parole was revoked on 5 November 1991; (2) Agency denied her IRCA application on 17 February 1992; (3) she did not seek asylum to avoid exclusion; (4) she secured waiver of any two-year homestay obstacles; and (5) the Third and Seventh Circuits think IIRIRA[1] killed *Fleuti*.

"Advance parole," not *Fleuti*, deserves to die, yet survives the Fourth Circuit's finding it "**not a statutory procedure**," *Joshi v. District Director*, 720 F.2d 799, 801-803 (1983); a class action ruling it *neither* "**consistent with the plain meaning of the statute [nor] a linguistically permissible interpretation of the statute**," *Catholic Social Services [CSS-I] v. Meese*, 685 F. Supp. 1149, 1155-7, 1159 (E.D. Cal. 1988); and Congress decreeing "**brief, casual, and innocent absences from the United States shall not be limited to absences with advance parole**" in the Legal Immigration Family Equity Act (LIFE Act) of 2000, 106 PL 553-Appendix B, §§1101-4, 114 Stat. 2762A-142-49, and LIFE Act Amendments, 106 PL 554-Appendix D, §§1501-6 114 Stat. 2763A-324-28. [underlining added to quotations in this Reply]

Respondents' admissions warrant this Court's striking down the "advance parole" chimera which, since 1978, *continues* to afflict **all aliens** eligible for lawful permanent resident (LPR) status who undergo processing in the U.S. in lieu of consular processing abroad.[2] At 476,641 aliens *per year*, that class is larger than any subject of this Court's immigration rulings.

Contrary to Respondents' Brief, (1) advance parole is not limited to IRCA applicants; (2) the LIFE Act, *supra*, **reopened IRCA's application period**, *until 4 June 2003, 8 CFR §245a.12(a) (2004)*, for all potential beneficiaries thwarted by front-desking;[3] and (3) the President decided the current system "**is not working**," partly because it denies aliens' liberty to travel and return.[4]

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[1] Illegal Immigrant Responsibility and Immigration Reform Act of 1996.

[2] Children born in the U.S. to alien mothers wrongly branded "parolees" might be later held not to have been born "subject to the jurisdiction" of the United States and denied natural-born citizenship status.

[3] The 2004 *CSS-I* settlement expects that class to exceed 200,000 aliens.

[4] *Please see* his 7 January 2004 speech announcing an imminent guest-worker program, App. 91a-97a (in this volume).

The right of lawful-but-not-yet-permanent resident aliens to go on non-disruptive trips abroad *and return to the U.S. in the same status as when they left* has faced and divided the Circuits in many contexts since 1983. Its great importance will only parallel the *continuing increase* of the percentage of status adjustees (64% in FY 2002) among new LPRs.

In 2004, 8 CFR *continues* to provide in relevant part [with italics in the original titles but added to the texts]:

> §212.5(f) *Advance authorization.* When parole is authorized for an alien who *will* travel to the United States without a visa, the alien shall be issued Form I-512. * * * * *
>
> §245.2(a)(4) *Effect of departure*— (i) *General.* [It depends on] the law under which [alien is seeking] adjustment of status.
>
> (ii) *Under section 245.* [D]eparture of an applicant who is not under exclusion, deportation, or removal proceedings shall be deemed an abandonment of his application *constituting grounds for termination* of any pending application for adjustment of status, *unless the applicant was previously granted advance parole by the Service for such absences,* and was inspected upon returning to the United States. * * * * *
>
> §245a.13(e) *Travel while the application is pending.* This paragraph is authorized by section 1104(c)(3) of the LIFE Act relating to the ability of an alien to travel abroad and return to the United States while [her] LIFE Legalization adjustment application is pending. Parole authority is granted to the Missouri Service Center Director for purposes [of] this section. Nothing [herein] shall preclude [a LIFE Legalization applicant] from being granted LIFE Legalization or admission into the United States under any other provision of law ... for which the alien may be eligible.
>
> (1) An applicant for LIFE Legalization benefits who wishes to travel during the pendency of the application and who is applying from within the United States should file, with [his] application for adjustment, at the Missouri Service Center, *a Form I-131, Application for Travel Document,* with a [set] fee. *The Service shall approve the Form I-131 and issue an advance parole document,* unless the Service finds that the alien's application does not establish a prima facie claim to adjustment of status under LIFE Legalization.

(2) An eligible alien who has properly filed a Form I-485 pursuant to this Subpart B, and who needs to travel abroad pursuant to the standards prescribed in section 212(d)(5) of the Act, may file a Form I-131 with the district director having jurisdiction over [his] place of residence.

(3) If an alien travels abroad and returns to the United States with a grant of advance parole, the Service shall presume that the alien is entitled to return under section 1104(c)(3)(B) of the LIFE Act, unless in a removal or expedited removal proceeding the Service shows by a preponderance of the evidence that one or more of the provisions of §245a.11(d) makes the alien ineligible for adjustment of status under LIFE Legalization.

(4) *If an alien* travels abroad and *returns without a grant of advance parole, [she] shall be denied admission and shall be subject to removal or expedited removal* unless the alien establishes clearly and beyond doubt that:

(i) [S]he filed an application for adjustment pursuant to LIFE Legalization during the application period that presented a *prima facie* claim to adjustment of status under LIFE Legalization; and

(ii) [H]er absence was either a brief and casual trip consistent with an intention on [her] part to pursue [her] LIFE Legalization adjustment application or was a brief temporary trip that occurred because of [her] need to tend to family obligations relating to a close relative's death or illness or similar family need. A single absence from the United States of more than thirty (30) days or an aggregate of all absences exceeding ninety (90) days shall not be deemed to be a brief and casual trip unless the alien can establish that due to emergent reasons [her] return to the United States could not be accomplished within the time period(s) allowed.

These regulations, in effect, say to future U.S. citizens: "To join America-the-Free, you must (a) stay in America-the-Prison until a slow and incompetent Service processes you, or (b) go abroad knowing that, upon your return, you will be considered here for all your obligations but not here for any of your rights."

Noteworthy in these "new" regulations are these points:

1. "LIFE Legalization" is not a new program but the original IRCA Legalization—reopened by the LIFE Act after 12 years of INS misimplementation and consequent litigation.
2. Instead of repealing 8 CFR §245.a2(l) (1987), the regulation invalidated by *CSS-I, supra*, Agency retained, and built on, it.
3. A variant of the "tension" acknowledged by the Eleventh Circuit in Petitioner's case between "readmitted" and "parole" recurs in the current regulations defining Form I-131 as "**application for travel document**" yet mandating issuance of "advance parole."[5] **So, whether "advance parole" is a "travel document" *vel non* is an issue that survives and grows in importance as long as adjustment of status does.**
4. The 2002-4 regulations promise "**travel document**" but issue "**advance parole**." The 1989 regulation promised "**readmission**" of aliens carrying advance parole; but Agency excluded Petitioner *because*, according to Agency, she was "**unadmitted**" *because* she held "**advance parole**" which is not really a travel document. **So, whether Agency may refuse to deliver what its regulation is fairly read to promise is an issue that survives as long as the Regulatory State does.**

Under the regulations in effect at the time of the decision sought to be reviewed, Petitioner can not be "unadmitted." As a holder of "advance parole," she is *"entitled to return under section 1104(c)(3)(B) of the LIFE Act,"* 8 CFR §245a.13 (e)(2) (2002), Pet. App. 85a-86a. (same in 2004). If all "advance parole" regulations are invalid as inconsistent with statutes, any "advance parole" Petitioner held, *whether she had knowingly accepted it or not*, is void; and she *in effect* had no "advance parole." As such, she cannot be denied admission if she met requirements (i) and (ii) of 8 CFR §245a.13 (e)(3) (2002), Pet. App. 86a, (same in 2004), which she did at her 13 December 1995 exclusion hearing.[6]

[5] The *sole* basis of Petitioner's exclusion, it will be remembered, was that "advance parole" is purportedly not a travel document.

[6] **There and then, IJ Copeland found, and Respondents never contested, that (i) she had timely established prima facie IRCA eligibility; and (ii) her 2-day trip to see a since-deceased uncle in Canada was "brief, innocent and casual." Pet. App. 37a-40a**

II. THE CHALLENGED "ADVANCE PAROLE" REGULATIONS ARE AN IMPERMISSIBLE SOLUTION TO AN IMAGINARY PROBLEM.

A. IMAGINARY PROBLEM

The Immigration and Nationality Act [INA] prohibits admission of immigrants without immigrant visas because immigrant visas are Congress' tool in controlling the type and number of new LPRs. Initially, most, if not all, new LPRs were new arrivals. Now, an increasing majority of new LPRs consists of status-adjustees. Applicant for adjustment to LPR status is an "immigrant without a visa": "immigrant" because the application for adjustment of status declares his/her intent to immigrate; "without a visa" because the future immigrant visa is being processed but the existing visitor's visa (generally conditioned on intent to not remain in the U.S. permanently) loses all force once its holder declares intent to remain in the U.S. permanently. But INA does not intend to keep *that* "immigrant without a visa" outside the U.S.

Some statutes; *e.g.*, the original IRCA Legalization and §245(i); even allow the application to be accepted only if the alien is in the U.S.[7] INA, which allows or commands adjustment of status within the U.S., cannot possibly intend to keep applicants for adjustment of status outside the U.S. though they are, *in letter only*, immigrants without immigrant visas *yet*.[8]

But the bureaucratic mind sees only the letter of the law, leaving the judicial mind to discern the spirit of the law.

So, Agency saw the returning resident alien applicant for adjustment to LPR status as an immigrant without a visa and *presumed* such alien inadmissible, which is *semantically* but *not legally* true. Having seen a problem where INA indicates none exists, Agency devised a "solution" INA and basic humanity do not permit: readmit that alien physically but not legally by issuing him/her "parole" in advance.

[7] Status-adjustees may be better suited for LPR status by having known, and been known to, the U.S. longer than new arrivals. In some countries, the law does not grant newly-arriving aliens immigrant status until after they have sojourned there for a prescribed period of time.

[8] To be eligible to apply for adjustment of status, alien must have waited in line for a visa and satisfied all INA's admissibility requirements.

B. IMPERMISSIBLE SOLUTION

By its terms, 8 U.S.C. §1182(d)(5) authorizes Agency to respond to *unanticipated* emergency arrivals of *nonimmigrants*, not to the *anticipated* return of applicants for *immigrant* status. In 1996, PL 104-208, §602(a), (IIRIRA) limited authority under §1182(d)(5) to that exercised **"only on a case-by-case basis"** App. 90a (in this volume). Blanket issuance of "advance parole" to all LIFE Legalization applicants who file Form I-131 and pay its fee, 8 CFR §245a.13(e)(1) (2004), *supra*, is the opposite of **"case by case."**

In "the legal entry fiction," aliens physically in the U.S. are said to be "still at the border" where the Constitution does not protect them. But §1182(d)(5) parolees are **not** "fictional aliens." They are real human beings living in the U.S., where equal protection of the laws is necessary for the orderly life of society itself. Clearly then, Congress intends for parolee status to be reserved for the rare alien without any eligibility to visit, or reside in, the U.S.—and then only for few days to avoid creating a *permanent* class of human beings subject to all the law's liabilities yet enjoying none of its protections.

If any human life may be lived in the U.S. without constitutional rights at all, then the U.S. Constitution has no value.

III. THE CHALLENGED "ADVANCE PAROLE" REGULATIONS ARE INEFFECTIVE AND INEFFICIENT.

The litigation "advance parole" caused before and after IRCA (Pet. pp 8-12 and 19-22) diverted resources from better uses.

Current blanket issuance of "advance parole" works against the "brief, casual and innocent" statutory commands since only an alien traveling without "advance parole" must prove his/her trips abroad was "brief, casual and innocent." Aliens armed with advance parole (which could induce *less* rigorous inspection, at the border, of its holders) may engage in such noxious acts abroad as are undetectable at the U.S. border.

If a 30-day/trip with a 90-day aggregate limit replaced the "brief, casual and innocent" rule, a card to be date-stamped on departure and arrival is easier to calculate and does not degrade the returning resident aliens' legal status or tar them with "parolee" labels like criminals released by grace.

IV. PETITIONER'S CASE IS MOST REPRESENTATIVE OF THE OPPRESSIVE EFFECTS OF "ADVANCE PAROLE."

Petitioner's parole was, for no reason at all, revoked by an INS employee (who had no role is issuing it *ab initio*) **104 days** *before* her IRCA application was denied by Agency.

Petitioner's purported "parolee" status has not only precluded judicial review of agency denial of her IRCA application, it did not even guarantee her presence in the U.S. until final agency action on her application. The "advance parole" regulations do not protect aliens who obey them from such arbitrary actions because they have no standard for revocation.

Grant or renewal of work permit to parolee also remains at agency discretion; *INS v. National Center for Immigrants' Rights*, 502 U.S. 183 (1991); and Petitioner was denied same for 11 years.

Absent fault by alien statutorily entitled to reside, albeit provisionally, (s)he should not so lightly be converted into such vulnerable parolee status and thrown to bureaucrats.

V. PETITIONER'S CASE IS AT THE PERFECT INTERSECTION OF THE *FLEUTI* DOCTRINE AND THE HELSINKI ACCORD.

Fleuti basically held a "brief, casual and innocent" trip abroad is as if the alien never departed. Helsinki binds its signatories to preserve the status of every person who travels across their borders for family visit(s) as it was before travel.

Petitioner's 2-day trip to Canada to see a since-deceased uncle fits both *Fleuti* and Helsinki. Even if *Fleuti* were not viable without the since-amended statutory language, Helsinki is statute-independent. This case is a perfect vehicle to show Helsinki availing if or where *Fleuti* is not. Without that, IIRIRA will continue to divide the Circuits on such major issues as:

1. Is LPR returning from a family-need-based absence longer than 180 days applying for a new entry or not?
2. Does alien PRUCOL returning from Helsinki-type trip make new entry for purposes of: (a) whether a crime is committed within x years of entry; (b) breaking period of continuous presence needed for certain waivers; and/or (c) other future rights and liabilities keyed to date of last entry?

VI. THIS CASE IS A PERFECT VEHICLE TO DISTINGUISH BASIC HUMAN RIGHTS FROM STATUTORY BENEFITS.

Respondents highlight the Eleventh Circuit's insistence that IRCA escalates **"travel benefits."** Pet. App. 17a. But that is a fundamental flaw of the decision sought to be reviewed. Congress may escalate benefits and liabilities but not human rights. **"The inherent dignity of the human person"** needs no Act of Congress to endow *everyone* with the full complement of human rights. **Freedom of travel is a basic human rights.** At issue here is aliens' right to travel *from* the U.S., for the right to return after a short trip is integral to the liberty to depart.

What the Eleventh Circuit mistook for allocation of human rights among aliens is simply a rationing of *Agency* resources among successive IRCA phases: Agency **"*shall* broadly disseminate information"** before the application period opens, 8 U.S.C. §1255a(i), and during the application period, **"*shall* provide [to the] alien who presents a prima facie application [an] appropriate work permit."** §1255a(e)(2)(B). In the next phase, Agency shall provide *another* work permit, §1255a(b)(3)(B), and **"*shall*, in accordance with regulations, permit the alien to return to the United States,"** §1255a(b)(3)(A). This cannot mean that IRCA alien may not return during the first phase; it means that *Agency* was not *mandated* to issue the regulations until the second phase.

Congress could not have thrown to the alien **"who presents a prima facie application"**[9] **"a life line that it knew was a foot short,"** *Sullivan v. Hudson*, 490 U.S. 877, 890 (1989), by decreeing that "brief, casual and innocent" trips abroad do not breach the required continuous presence while intending that such alien be denied readmission upon return from *precisely* such trip.

[9] Respondents claim Petitioner was a "mere" applicant when she visited Canada in October 1989. Under IRCA, an alien is in the "mere" stage only while in Agency office tendering the application. **If it is accepted for filing, the alien is *prima facie* eligible with attendant rights.** If it is *incorrectly* refused, the alien is front-desked and acquires other rights. If it is correctly refused, the alien is no longer an applicant.

Petitioner's timely established *prima facie* IRCA eligibility put her in *provisional* lawful resident status from 4 May 1988 until final decision (including judicial review of Agency denial) on her application. Since such judicial review was thwarted here, her IRCA application was not *finally* denied but only Agency-denied.

IN SUM: Contrary to Respondents' claims that the "advance parole" regulations which divided the Circuits are obsolete or insignificant, said regulations are the most pervasive, useless, and degrading of all current U.S. immigration laws.

Petitioner argued below that Agency's need to monitor aliens' cross-border travels is valid but validly exercised only by issuance of *permission* to travel abroad and return under the standards of the Helsinki accord which the U.S. joined.

What had befallen her, to her detriment, is precisely what Helsinki forbids: profound change of cross-border traveler's legal status based *solely* on brief visit(s) to family member(s).

Not only is it unnecessary to call "permission" "parole" to achieve its legitimate monitoring and control purposes, the erroneous label is degrading and vastly harmful to aliens and counteracts the legitimate function of a "permission."

VII. RESPONDENTS' OTHER ARGUMENTS AGAINST *CERTIORARI* IN THIS CASE ARE THOROUGHLY FLAWED.

Respondents rely on *dictum* in *INS v. Phinpathya*, 464 U.S. 183, 194-5 (1984). But *Phinpathya* was overruled by IRCA §315(b), codified at 8 U.S.C. §1254(b)(3) (1986), as noted in *INS v. Hector*, 479 U.S. 85 (1986).

They also claim BIA's *Singh* will shake the Ninth Circuit, *en banc* no less, into reversing its *Espinoza-Gutierrez*. But BIA is entitled to no deference on IRCA because **"the statutory and regulatory scheme makes it quite clear that applications for amnesty are to be brought neither to Immigration Judges nor to the BIA."** *Farrokhi v. INS*, 900 F.2d 697, 704 (4th Cir. 1990). BIA admits that **"Legalization is outside this Board's purview,"** Pet. App. 44a. BIA's *Singh* ruling (that all protections IRCA confers on aliens are unavailing in removal proceedings) is not only illogical but also impermissible, for **"it is fundamental 'that an agency may not bootstrap itself into an area in which it has not jurisdiction.'"** *Adams Fruit Co. v. Barrett*, 494 U.S. 638, 650 (1990).

Pet. 25-27 showed how "advance parole" improperly forecloses review *by the court of appeals* of Agency denials of IRCA applications. Respondents counter by asking *this Court* to conclude, *at this stage*, that judicial review will affirm Agency denial of

Petitioner's IRCA application.[10] This is very strange. Argument to affirm Agency decision is made *during judicial review*, not to justify a scheme denying judicial review altogether.

Stranger yet is Respondents' concluding citation to Pet. App. 1a-26a, 31a-36a, and 65a, as **"uniform rejection of her claims."** All the Fourth and Sixth Circuits did was defer and/or transfer her cases to the Eleventh Circuit, which found itself without jurisdiction to review any of her applications for adjustment of status.

At bottom, Respondents' *only* reason to banish this innocent physician is that they have wanted it for 16 years.[11]

CONCLUSION

This Court declined to decide *prospectively* if INA treats **"aliens domiciled in the [U.S.] returning from temporary [trip] as if they were entering the [U.S.] for he first time."** *International Longshoremen's and Warehousemen's Union v. Boyd*, 347 U.S. 222, 223 (1954). After 50 years of Circuit splits and 15 years of Petitioner suffering, *certiorari* should be granted to definitively answer this long-deferred question which, according to Respondent's statistics (App. 89a, *contra*),[12] affects thousands of people *annually*.

Respectfully submitted.

Orin G. Briggs
Counsel for Petitioner

9 August 2004

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[10] *Immigrant Assistance Project [IAP] v. INS*, 306 F.3d 842 (9th Cir. 2002), is a final adjudication that Agency had misinterpreted the IRCA provision under which Petitioner applied. Her J-1 visa specified an MSPH program in Health Administration; but she used it to obtain her MPH in Epidemiology and Biostatistics instead. Changing programs without INS permission put her in unlawful status since September 1979 despite her facially valid visa. *Matter of T*, 9 I &N Dec. 239 (BIA 1961). The *IAP* class counsel chose Petitioner as a class representative in the amended complaint on remand *precisely because* Agency denial of her IRCA application illustrates Agency's errors.

[11] Their Brief p 12, n 5, even admits that there is no real bar to the adjustment of status they denied her for 16 years—except, of course, for the outstanding exclusion order which engendered this Petition.

[12] Those who forego necessary travel to avoid using advance parole are not reflected in the statistics.

IMMIGRANTS AND PAROLEES IN FISCAL YEARS 1991 - 2002

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Total LPRs	1,827,167	973,977	904,292	804,416	720,461	915,900	798,378	660,477	646,568	849,807	1,064,318	1,063,732
New arrivals	443,107	511,769	536,294	490,429	380,291	421,405	380,719	357,037	401,775	407,402	411,059	384,427
Status adjustees	1,384,060	462,208	367,998	313,987	340,170	494,495	417,659	303,440	244,793	442,405	653,259	679,305
Total parolees			123,490	111,403	113,452	133,503		234,545	263,775	299,851	273,914	244,834
Overseas and special programs			16,901	16,471	32,262	19,181		1,072	2,130	3,345	3,159	2,508
Humanitarian and medical			10,128	10,335	8,878	8,836		25,141	22,571	22,933	18,374	16,708
Public interest and legal			5,294	2,031	2,072	2,119		20,523	25,082	15,637	18,414	19,225
Port of entry and advance parole			63,348	58,824	61,019	95,415		177,701	204,364	247,664	221,290	199,671
Parole granted at port of entry								169,357	196,409	241,626	198,495	171,114
Advance Parole								8,344	7,955	6,039	22,795	28,557

Sources: *Statistical Yearbooks of the Immigration and Naturalization Service* for FYs 1998-2001
Yearbook of Immigration Statistics of the Department of Homeland Security for FY 2002

Notes: (1) No figures are given in the above sources for the cells left blank.
(2) The second source gives this analysis at p 92: "The growth in the use of advance parole is thought to be caused in part by the backlog of applications for adjustment to lawful permanent resident status in 2001 and 2002."
(3) The status adjustees in the early 1990s include IRCA adjustees. The increase in adjustments in 2001 and 2002 is probably an effect of the LIFE Act and the Life Act Amendments of 2000.

Supplement of Statutes and Regulations Involved

As amended by IIRIRA, 8 U.S.C. §1182(d)(5) provides:

(5)(A) The Attorney General may, except as provided in subparagraph (B) or in section 1184(f) of this title, in his discretion parole into the United States temporarily under such conditions *as he may prescribe only on a case-by-case basis* ***for urgent humanitarian reasons*** *or significant public benefit* any alien *applying for admission* to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned *to the custody* from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

(B) The Attorney General may not parole into the United States an alien who is a refugee unless the Attorney General determines that compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States rather than be admitted as a refugee under section 1157 of this title. [emphasis added]

8 CFR §245a.13(e)(2004), provides in pertinent part:

> (5) An applicant for LIFE Legalization benefits who applies for admission into the United States shall not be subject to the provisions of section 212(a)(9)(B) of the Act.
>
> (6) Denial of admission under this section is not a denial of the alien's application for adjustment. The alien may continue to pursue [his] application for adjustment from abroad. Such application shall be adjudicated in the same manner as other applications filed from abroad.

[The President's] Remarks on Immigration Reform
January 7, 2004

Thanks for coming. Thanks for the warm welcome. Thanks for joining me as I make this important announcement, an announcement that I believe will make America a more compassionate and more humane and stronger country.

I appreciate members of my Cabinet who have joined me today, starting with our Secretary of State, Colin Powell. I m honored that our Attorney General, John Ashcroft, has joined us; Secretary of Commerce Don Evans; Secretary Tom Ridge of the Department of Homeland Security, I'm honored you're here; *el embajador de Mexico,* Tony Garza. I thank all the other members of my administration who have joined us today.

I appreciate the Members of Congress who have taken time to come: Senator Larry Craig, Congressman Chris Cannon, and Congressman Jeff Flake. I'm honored you all have joined us. Thank you for coming.

I appreciate the members of citizen groups who have joined us today: chairman of the Hispanic Alliance for Progress, Manny Lujan; Gil Moreno, the president and CEO of the Association for the Advancement of Mexican Americans; Roberto de Posada, the president of the Latino Coalition; and Hector Flores, the president of LULAC. Thank you all for joining us.

Many of you here today are Americans by choice, and you have followed in the path of millions. And over the generations, we have received energetic, ambitious, optimistic people from every part of the world. By tradition and conviction, our country is a welcoming society. America is a stronger and better nation because of the hard work and the faith and the entrepreneurial spirit of immigrants.

Every generation of immigrants has reaffirmed the wisdom of remaining open to the talents and dreams of the world. And every generation of immigrants has reaffirmed our ability to assimilate newcomers, which is one of the defining strengths of America.

During one great period of immigration, between 1891 and 1920, our Nation received some 18 million men, women, and children from other nations. The hard work of these immigrants helped make our economy the largest in the world. The children of immigrants put on the uniform and helped to liberate the lands of their ancestors. One of the primary reasons America became a great power in the 20th century is because we welcomed the talent and the character and the patriotism of immigrant families.

The contributions of immigrants to America continue. About 14 percent of our Nation's civilian workforce is foreign-born. Most begin their working lives in America by taking hard jobs and clocking long hours in important industries. Many immigrants also start businesses, taking the familiar path from hired labor to ownership.

As a Texan, I have known many immigrant families, mainly from Mexico, and I have seen what they add to our country. They bring to America the values of faith in God, love of family, hard work, and self-reliance, the values that made us a great nation to begin with. We've all seen those values in action, through the service and sacrifice of more than 35,000 foreign-born men and women currently on active duty in the United States military. One of them is Master Gunnery Sergeant Guadalupe Denogean, an immigrant from Mexico who has served in the Marine Corps for 25 years and counting. Last year, I was honored and proud to witness Sergeant Denogean take the oath of citizenship in a hospital where he was recovering from wounds he received in Iraq. I'm honored to be his Commander in Chief. I'm proud to call him fellow American.

As a nation that values immigration and depends on immigration, we should have immigration laws that work and make us proud. **Yet today, we do not.** Instead, we see many employers turning to the illegal labor market. We see millions of hard-working men and women condemned to fear and insecurity in a massive undocumented economy.

Illegal entry across our borders makes more difficult the urgent task of securing the homeland. **The system is not working.** Our Nation needs an immigration system that serves the American economy and reflects the American Dream.

Reform must begin by confronting a basic fact of life and economics: Some of the jobs being generated in America's growing economy are jobs American citizens are not filling. Yet these jobs represent a tremendous opportunity for workers from abroad who want to work and fulfill their duties as a husband or a wife, a son or a daughter. Their search for a better life is one of the most basic desires of human beings.

Many undocumented workers have walked mile after mile through the heat of the day and the cold of the night. Some have risked their lives in dangerous desert border crossings or entrusted their lives to the brutal rings of heartless human smugglers. Workers who seek only to earn a living end up in the shadows of American life, fearful, often abused and exploited. When they are victimized by crime, they are afraid to call the police or seek recourse in the legal system. **They are cut off from their families far away, fearing if they leave our country to visit relatives back home, they might never be able to return to their jobs.**

The situation I described is wrong. It is not the American way. Out of common sense and fairness, our laws should allow willing workers to enter our country and fill jobs that Americans are not filling. We must make our immigration laws more rational and more humane. And I believe we can do so without jeopardizing the livelihoods of American citizens.

Our reforms should be guided by a few basic principles. First, America must control its borders. Following the attacks of September the 11th, 2001, this duty of the Federal Government has become even more urgent, and we're fulfilling that duty. For the first time in our history, we have consolidated all border agencies under one roof to make sure they share information and the work is more effective. We re matching all visa applicants against an expanded screening list to identify terrorists and criminals and immigration violators. This month, we have begun using advanced technology to better record and track aliens who enter our country and to make sure they leave as scheduled. We have deployed new gamma and x-ray systems to scan cargo and containers

and shipments at ports of entry to America. We have significantly expanded the Border Patrol with more than 1,000 new agents on the borders and 40 percent greater funding over the last 2 years. We're working closely with the Canadian and Mexican Governments to increase border security. America is acting on a basic belief: Our borders should be open to legal travel and honest trade; our borders should be shut and barred tight to criminals, to drug traders—to drug traffickers and to criminals and to terrorists.

Second, new immigration laws should serve the economic needs of our country. If an American employer is offering a job that American citizens are not willing to take, we ought to welcome into our country a person who will fill that job.

Third, we should not give unfair rewards to illegal immigrants in the citizenship process or disadvantage those who came here lawfully or hope to do so.

Fourth, new laws should provide incentives for temporary foreign workers to return permanently to their home countries after their period of work in the United States has expired.

Today I ask the Congress to join me in passing new immigration laws that reflect these principles, that meet America's economic needs and live up to our highest ideals.

I propose a new temporary-worker program that will match willing foreign workers with willing American employers when no Americans can be found to fill the jobs. This program will offer legal status as temporary workers to the millions of undocumented men and women now employed in the United States and to those in foreign countries who seek to participate in the program and have been offered employment here. This new system should be clear and efficient so employers are able to find workers quickly and simply.

All who participate in the temporary-worker program must have a job or, if not living in the United States, a job offer. The legal status granted by this program will last 3 years and will be renewable, but it will have an end. Participants who do not remain employed, who do not follow the rules of the program, or who break the law will not be eligible for continued participation and will be required to return to their home.

Under my proposal, employers have key responsibilities. Employers who extend job offers must first make every reasonable effort to find an American worker for the job at hand. Our Government will develop a quick and simple system for employers to search for American workers. Employers must not hire undocumented aliens or temporary workers whose legal status has expired. They must report to the Government the temporary workers they hire and who leave their employ so that we can keep track of people in the program and better enforce our immigration laws. There must be strong workplace enforcement with tough penalties for anyone, for any employer, violating these laws.

Undocumented workers now here will be required to pay a one-time fee to register for the temporary-worker program. Those who seek to join the program from abroad and have complied with our immigration laws will not have to pay any fee. All participants will be issued a temporary-worker card that will allow them to travel back and forth between their home and the United States without fear of being denied reentry into our country.

This program expects temporary workers to return permanently to their home countries after their period of work in the United States has expired, and there should be financial incentives for them to do so. I will work with foreign governments on a plan to give temporary workers credit, when they enter their own nation's retirement system, for the time they have worked in America. I also support making it easier for temporary workers to contribute a portion of their earnings to tax-preferred savings accounts, money they can collect as they return to their native countries. After all, in many of those countries, a small nest egg is what is necessary to start their own business or buy some land for their family.

Some temporary workers will make the decision to pursue American citizenship. Those who make this choice will be allowed to apply in the normal way. They will not be given unfair advantage over people who have followed legal procedures from the start.

I oppose amnesty, placing undocumented workers on the automatic path to citizenship. Granting amnesty encourages the violation of our laws and perpetuates illegal immigration. America is a welcoming country, but citizenship must not be the automatic reward for violating the laws of America.

The citizenship line, however, is too long, and our current limits on legal immigration are too low. My administration will work with the Congress to increase the annual number of green cards that can lead to citizenship. Those willing to take the difficult path of citizenship, the path of work and patience and assimilation, should be welcome in America like generations of immigrants before them.

In the process of immigration reform, we must also set high expectations for what new citizens should know. An understanding of what it means to be an American is not a formality in the naturalization process; it is essential to full participation in our democracy. My administration will examine the standard of knowledge in the current citizenship test. We must ensure that new citizens know not only the facts of our history but the ideals that have shaped our history. Every citizen of America has an obligation to learn the values that make us one Nation: liberty and civic responsibility, equality under God, tolerance for others.

This new temporary-worker program will bring more than economic benefits to America. Our homeland will be more secure when we can better account for those who enter our country, instead of the current situation in which millions of people are unknown, unknown to the law. Law enforcement will face fewer problems with undocumented workers and will be better able to focus on the true threats to our Nation from criminals and terrorists. And when temporary workers can travel legally and freely, there will be more efficient management of our borders and more effective enforcement against those who pose a true threat to our country.

This new system will be more compassionate. Decent, hard-working people will now be protected by labor laws, with the right to change jobs, earn fair wages, and enjoy

the same working conditions that the law requires for American workers. Temporary workers will be able to establish their identities by obtaining the legal documents that we all take for granted. And they will be able to talk openly to authorities, to report crimes when they are harmed, without the fear of being deported.

The best way in the long run to reduce the pressures that create illegal immigration in the first place is to expand economic opportunity among the countries in our neighborhood. In a few days I will go to Mexico for the special Summit of the Americas, where we will discuss ways to advance free trade and to fight corruption and encourage the reforms that lead to prosperity. Real growth and real hope in the nations of our hemisphere will lessen the flow of new immigrants to America when more citizens of other countries are able to achieve their dreams at their own home.

Yet our country has always benefited from the dreams that others have brought here. By working hard for a better life, immigrants contribute to the life of our Nation. The temporary-worker program I am proposing today represents the best tradition of our society, a society that honors the law and welcomes the newcomer. This plan will help return order and fairness to our immigration system. And in so doing, we will honor our values by showing our respect for those who work hard and share in the ideals of America. May God bless you all.

NOTE: The President spoke at 2:45 p.m. in the East Room at the White House. In his remarks, he referred to Antonio O. Garza, U.S. Ambassador to Mexico. The Office of the Press Secretary also released a Spanish language transcript of these remarks.

Counsel's note: Rather than selecting excerpts which might change the tenor, the complete speech was reprinted above *verbatim* from the White House Website with the relevant parts emphasized in bold print.